

container lip.” Applicants believe that this statement is improper, because it is conclusory and does not provide the proper example mandated under MPEP § 806.05(d).

Applicants contend that the Examiner has not properly asserted, by way of example, that one of the subcombinations has utility other than in the disclosed combinations. The invention of Group II, the lid, is specifically designed for the contours of the container of Group I and should not be lightly dismissed by the Examiner.¹ As such, Applicants assert that the lid of Group II has specifically designed utility for the container of Group I.

Although it is unclear whether the election of species requirement is relevant given Applicants’ election herein to prosecute the Group I claims, to ensure full compliance with the requirement, Applicants provisionally elect to prosecute the species of Group I. Claims 1-26 are believed to read on the elected species.

Therefore, Applicants traverse the election of species requirement on the ground that the Examiner has not satisfied the requirements of MPEP § 808, which provides that “[e]very requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why the inventions as claimed are either independent or distinct; and (B) the reasons for insisting upon restriction therebetween as set forth in the following sections.” [Emphasis in the original.] The Examiner has not provided a proper reason supporting the conclusion that the membrane lids embodied in the various figures are patentably distinct, one from the other. As such, the election of species requirement is improper and Applicants request its withdrawal.

Respectfully submitted,

For: Gerard Laurant Buisson, et al.

By 

Theodore P. Cummings, Esq.
Attorney for Applicants
Reg. No. 40,973

Customer Number 27752

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¹ Applicants’ Specification, page 4, line 30 to page 5, lines 1-3: “The membrane lids, container lips and containers according to the present invention provide improvements which facilitate packaging, contribute to reduced breakage during packaging, shipping and/or handling, and/or contribute to maintaining the hermetic seal of the container while presenting a user-friendly membrane lid to a consumer for removal at will.”